United Nations A/HRC/26/NGO/96

General Assembly

Distr.: General
6 June 2014

English, French and Spanish only

Human Rights Council
Twenty-sixth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Europe-Third World Centre (CETIM), non-governmental organization in General consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-04459 (E)
1404459

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Human Rights Violations by Coca Cola in Colombia[1]

The transnational corporation Coca Cola,[2] settled in Colombia in 1940, through a franchise granted to the Indega S.A. bottling company in the central area, northern coast and north-eastern area of Colombia.[3] The bottling companies under Indega S.A. were bought out in 1995 by Panamco Beverages, Inc., with 25% of its shares held by Coca Cola. In May 2003, Fomento Mexicano S.A. bought Panamco through the Coca Cola Femsa S.A. franchise, with Coca Cola retaining 31,6% of the shares. This is the company that holds the franchise in Colombia, and through which it operates in most Latin American countries.

Through this off-shore legal framework, Coca Cola produces and sells its products keeping ownership of the brands, capital control and a presence on the board of directors of the local enterprises. It also controls all the processes regarding raw materials, supplies, production, distribution and labour policy, avoiding liability for the human rights violations committed.

Coca Cola's activities in Colombia affect the environment and health, among others.[4] But, above all, the history of Coca Cola in Colombia is that of a permanent attack on labor and trade-union rights, including the killing of at least ten trade unionists and links with paramilitary groups.

Working time extensions and pace-of-work increases have allowed the transnational corporation to operate with 5 Coca Cola Femsa bottling plants and close 11 in 2003, laying off hundreds of workers. Sinaltrainal members started a hunger strike in March 2004, in order to try to avoid the wide-scale lay-off of workers. In 2014, with the opening of the gigantic bottling plant that the company is building in Tocancipá, Cundinamarca, new bottling plant closings and lay-offs are planned.

According to company documents known to Sinaltrainal union leaders, such as "*Dia D*", "*Plan Pandrino*" and "*el Corrientazo*", Sinaltrainal is considered as an obstacle to reducing labour costs, since it opposes subcontracting, which accounts for some 70% of the over 7,000 workers involved in the company's production. Such subcontracting is carried out through front companies, many of which belong to the transnational corporation itself, among which: Atencom S.A.S., Imbera, OXXON, FL Colombia S.A.S. They simulate direct working contracts, thus preventing the paying of benefits provided for under the collective labor contract. Sinaltrainal is opposed to the so-called positive human resources plan, which is how the company weakens the trade union (that at present has only 287 affiliated workers), in

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[1] This declaration has been drafted in collaboration with Sinaltrainal-Colombia.

[2] with its head office in Atlanta, Georgia.

[3] Other franchises such as Bebidas y Alimentos de Urabá were created.

[4] For example, the company has been criticized for importing sugar products, raw materials and supplies to the detriment of national producers, for consuming huge amounts of water for years, for dumping waste into water sources, and it has been even fined for polluting wetlands and emitting huge quantities of greenhouse gas. Moreover, it refuses to respond to requests from Sinaltrainal to commit itself to reducing carbon dioxide emissions (See http://www.prensaverde.org.co/prensa01.php?mncr=1&sbmn=1&ppc=1&ppf=1&codnot=11000476, http://www.salvacionagropecuaria.net/gaseosa%20importa%20azucar%20del%20brasil.htm, and http://www.eltiempo.com/archivo/documento/MAM-2510753). Coca Cola products have been denounced for containing substances that are dangerous to health and cause damage to the youth population. Josh Gold, Coca Cola spokesman, announced that the brominated vegetable oil (BVO) used in beverages such as Fanta, Powerade and others such as citric-flavoured beverages, would be removed and replaced by sucrose acetate isobutyrate. In the USA it was agreed that sugary products would be removed from schools, but in Colombia the company has not taken into account Sinaltrainal's request to enact such an agreement there in order to protect children's health (See http://www.telesurtv.net/articulos/2014/05/06/coca-cola-retira-aceite-vegetal-bromado-de-sus-bebidas-3399.html and http://www.eluniversal.com.mx/notas/686248.html).

order to eliminate the collective labor contract and to put illegal pressure on the workers so as to make them give up their work contracts.

On 10 August 2004, the transnational corporation, with the consent of the Ministry of Labour, revoked Sinaltrainal's by-laws, thus hindering membership by outsourced workers. The company tried to persuade judges to declare illegal Sinaltrainal sections in Bogotá, Girardot, Santa Marta, Cali and Villavicencio, among others, but it did not succeed. It has tried this several times, and now we face case N° 0240-2012 in the Bogotá Labor Court, where the Coca Cola Villavicencio bottling plant is again requesting that the union be declared illegal. Coca Cola has also tried – with no success – to get a permit from judiciary to fire labor leaders.

In order to terrorize workers so they either do not join Sinaltrainal or give up such membership, they use the ploy of criminalizing the victims: the corporation administration carries on systematic stigmatization campaigns against Sinaltrainal memberss by publishing images of workers and their families, accusing the union members of vandalism and damage to property, or gathering workers against their will so as to show them "graphics" accusing members of Sinaltrainal of being the guilty ones. They have caused moral and material damages, putting life and the integrity of several members of Sinaltrainal[5] at stake, because they have been involved in criminal cases charging unionists with slander, calumny, damage to property, conspiracy to commit crime, rebellion and terrorism, among other things, with at least 12 leaders of Sinaltrainal unfairly imprisoned. An arrest warrant was issued against them, and the corporation took advantage of this to give them notice of dismissal for "just cause". But the company was compelled to rehire them when they were acquitted.[6]

In order to hinder freedom of association, the transnational corporation militarizes repression for protesting. As in many other cases, there are the events that happened in the Medellín bottling plant on 17 December 2010, where police entered with armored cars to force removal of subcontracted and Sinaltrainal affiliated workers that refused to move the distribution vehicles. Some individuals, on behalf of Coca Cola and escorted by policemen, went to the workers' homes with dismissal notices for them.

The social, political and armed conflict that continues in Colombia after more than 50 years is used as a pretext by the state and by transnationals such as Coca Cola to carry out an anti-trade union policy, aiming to link trade union activities, workers' claims and protests with actions by outlaw organizations or organizations guilty of violent crimes. Several members of Sinaltrainal that work for Coca Cola bottling companies have been unjustifiably accused by the Administrative Department of Security (DAS) of being a danger for national security. Coca Cola has been implicated in having links to and supporting the war that the state security forces are carrying on. An example of this is the gathering of people from Coca Cola bottling plants in February 2010 on the military base of Tolemaida. Under the slogan "Guided by Pride" and dressed in military uniforms, they participated in war maneuvre training.[7]

Also worth noting are the 68 workers, members of Sinaltrainal working for Coca Cola bottling plants since 1984, who have receiving death threats, those exiled[8] and displaced with their families that the company refuses to relocate to other cities,[9] workers imprisoned under false charges[10] and the 11 that were killed[11], five of whom worked in the Carepa

[5] Among others, Luis Javier Correa (its president), Efrain Guerrero, Luis Eduardo Garcia, Efrain Surmay and Alfredo Porras.

[6] All the charges against the Sinaltrainal leaders were dropped. La Dirección Seccional de Fiscalías de Bogotá N° 55, 20 February 2006, case 675549 acquitted Luis Javier Correa Suarez Luis Eduardo Garcia, Efrain Guerrero and William Mendoza). See also cases 76988, 21 June 2000; case 7834, 12 May 1995; case 3427, 16 February 1993; casd 3522, 19 November 1984.

[7] 8 February 2010, in the Colombian military fort Tolemaida (Centro nacional de entrenamiento- CENAE) in Melgar Tolima, a convention was held by Coca Cola Femsa entitled "Guiados por el Orgullo" ("Guided by Price"). It should be noted that Tolemaida is a United Sates military base in Colombia.

[8] Luis Adolfo Cardona left Carepa Antioquia, after having fled from paramilitaries that were hunting for him to torture and kill him; Alfredo Porras Rueda, after having been imprisoned and wrongly accused of being a guerrillero.

[9] Etiel Aragón of Santa Marta and Juan Carlos Galvis of Barrancabermeja were threatened with death along with their families, and, faced with the refusal of the company to relocate them, they had to work in the city where they were threatened with death. This also happened to other workers who were member of Sinaltrainal.

[10] Rodolfo Pérez, Alfredo Porras Rueda, Álvaro González, Sergio López, Domingo Flórez, Luis Eduardo García, the last six persons fired.

Antioquia bottling plant. One of them – Isidro Segundo Gil – was killed inside the premises on 5 December 1996, the day for the company to start negotiations on Sinaltrainal's list of demands.[12] The same killers knocked down the doors of Sinaltrainal headquarters and burnt the facilities.

On 26 December 1996, another Coca Cola worker in Carepa was forcibly removed from the bottling plant by presumed members of the paramilitary forces and was killed near the Chigorodó cemetary (Antioquia).[13] In the case of the murder of Adolfo de Jesús Munera López, a single person was convicted,[14] in the other case the investigations resulted in no convictions.

In 2002, a criminal complaint against Coca Cola, directed at its head office in Atlanta, was filed before a judge of the Court of Miami District, for the company's supposed involvement in the killing of Colombian trade unionists.

"We want justice and want the people to know the truth about what happened in Colombia against Coca Cola workers", said Javier Correa, president of the Colombian Sinaltrainal. The complaint is linked to the killing of Segundo Gil in 1996, not long after Richard Kirby, the North American owner of a bottling plant in Carepa, Antioquia, said that he would do anything necessary to kill and make disappear workers that tried to join trade unions and is said to have made an agreement with gunmen to this end.

The main question, says Terry Collingsworth, a jurist of the International Labor Rights Fund, is: "Why didn't Coca Cola intervene to put an end to the violence?" And he adds: "Coca Cola, like many other companies, controls the product and gathers the profits, but states that it has no liability as regards workers".

The answer by Coca Cola was to file a complaint against workers of Sinaltrainal before the public prosecutor, because they had brought the case to US courts.[15] and on 11 August 2009, the United States judge Thomas K. Kahn Clerck dismissed the case against Coca Cola, declaring he lacked jurisdiction to hear it.[16]

In April 2006, the Peoples Permanent tribunal, Colombia chapter, found Coca Cola and other transnational corporations, among which Nestlé, guilty of violating workers' human rights and of attempting to destroy Sinaltrainal, as well as of the pillaging Colombia's natural resources, in particular water.

Owing to international pressure, the Carter Center in the United States met with representatives of Coca Cola and Sinaltrainal and negotiations with the company started in 2007, but the company was just buying time, seeking to diffuse the pressure of the claim against it and influence the conditions of any future settlement.

Sinaltrainal has addressed the ILO Committee on Freedom of Association with a complaint[17] that has been expanded several times for human rights violations committed by Coca Cola in Colombia, and the recommendations that were issued have not been respected since they are not binding[18].

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[11] José Eleazar Manco David (Carepa Antioquia, 8-04-1994), Luis Enrique Giraldo (Carepa Antioquia, 20-04-1994), Luis Enrique Gómez Granados (Carepa Antioquia, 23-04-1995), Avelino Anchicanoy Erazo (Pasto Nariño, 31-07-1990), Isidro Segundo Gil (Carepa Antioquia, 5-12-1996), José Libardo Herrera Osorio (Carepa Antioquia, 26-12-1996), Guillermo Gómez Maigual (died in the Nariño Pasto plant, 20-04-98), Oscar Darío- Soto Polo (Montería Córdoba, 21-06-2001), Adolfo de Jesús Múnera López (Barranquilla Atlántico, 31-08-2002), Ricardo Ramón Paublott Gómez (Barranquilla Atlántico, 26-01- 2012).

[12] On 18 November 2000, presumed members of the paramilitary forces dragged the widow of Isidro Segundo Gil from her house and killed her.

[13] José Libardo Herrera Osorio, also a member of Sinaltrainal.

[14] Case 164, Unidad de Derechos Humanos de la Fiscalía à Bogotá.

[15] Case 585334, 28 July 2003. The Fiscal Seccional 61 (District 61 Court) accused of insults and calumny Luis Javier Correa Suarez, Jorge Humberto Leal, Juan Carlos Galvis, Luis Eduardo Garcúia, Álvaro González, José Domingo Flórez et Edgar Alberto Páez Melo. On 13 January 2004 , the Fiscal 25 acquitted them all.

[16] Cas No. 06-15851, D. C. Docket No. 01-03208-CV-JEM

[17] 18 September 2007, case 2595.

[18] The 305th ILO Governing Body, in June 2009, approved Report n°354 of the Committee on Freedom of Association in which the recommendations are to be found (paragraphs 485 to 588).

Given the harassment that workers of Coca Cola bottling plants are facing, and the danger for their life and physical integrity, the *Comisión Interamericana de Derechos Humanos,* has ordered precautionary measures for 26 Sinaltrainal members.

On 9 October 2012, the European Center for Constitutional and Human Rights (ECCHR) and the *Colectivo de Abogados José Alvear Restrepo* (CAJAR) of Colombia, with the support of the *Central Unitaria de Trabajadores* (CUT), submitted a communication to the Office of the Prosecutor of the International Criminal Court (ICC) in The Hague, requesting the opening of a criminal inquiry with respect to anti-trade union violence in Colombia. Among the cases that were submitted are several of the murders of Sinaltrainal leaders.

In 2008, the ILO conducted a mission in Colombia in order to assess the situation but did not take into account past facts: killings, death threats, attacks, kidnapping attempts, attacks on the union, lay-offs en masse, environmental damage; nor did it accept or consider any evidence of those facts submitted by Sinaltrainal.

The impunity that continues to benefit Coca Cola for the human, labor and trade union rights violations in Colombia shows the need for a legally binding international instrument making it possible to control activities of transnational corporations and their impacts on human rights as well as to guarantee justice and redress for victims.

Only a legally binding international instrument for transnational corporations can generate the legal, social and political pressure on them to put an end to their continuous behavior of extermination of trade unions and of increasing precariousness of work, and oblige the state of Colombia to judge and punish those liable for harassment of Colombian trade unionists.

For all the above mentioned reasons, the Europe–Third World Center (CETIM) urges the government of the United States to comply with its duty to make sure that transnational corporations based within its territory do not violate human rights, in particular while carrying on their activities in other countries and, should that be the case, to grant victims access to justice. We appeal in particular to the government of the United States to intervene in order to put an end to the incessant attacks by Coca Cola on human, labor and trade union rights in Colombia, and to assure that victims obtain justice and redress.

The CETIM also requests the Colombian government to comply with its duty to grant respect and protection of human rights in Colombia, in particular labor and trade union rights and the freedom of peaceful association, and to take, urgently, all necessary measures so as to guarantee the security and physical integrity of Sinaltrainal's trade unionists. We appeal in particular the government of Colombia to put an end to Coca Cola's permanent attacks against human rights in Colombia and to guarantee justice and redress for the victims of its activities.

The CETIM requests the Special Rapporteur on Extrajudicial Summary or Arbitrary Executions and the Special Rapporteur on the Right to Freedom of Peaceful Assembly and Association to monitor this case closely and to pay a visit to Colombia.

Further, the CETIM requests the Human Rights Council to create an intergovernmental working group with the mandate to develop a binding international treaty in order to monitor transnational corporations and to guarantee access to justice for the victims of their activities.